ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION IV

CACR06-713

APRIL 4, 2007

BOBBY MORGAN APPELLANT	APPEAL FROM THE GREENE COUNTY CIRCUIT COURT [NO. CR-2004-182]
V.	HON. JOHN NELSON FOGLEMAN, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Appellant Bobby Morgan appeals his December 1, 2006, conviction of rape and incest. Appellant contends that the Greene County Circuit Court erred in denying his motion for directed verdict, arguing that the State's witnesses were not credible. We affirm.

Appellant was charged on May 10, 2004, with rape and incest, after his daughter recounted the abusive episodes to an Arkansas State Police investigator and an Arkansas Department of Health and Human Services (DHS) caseworker in January 2004. Appellant's pastor testified at trial that he called someone at appellant's daughter's school because he was concerned for her. The pastor was given a number to call and report what he had seen. While the pastor was not certain his was the call, an anonymous tip to the Child Abuse

Hotline began an investigation. The Arkansas State Police investigator testified that appellant's daughter revealed that appellant had been touching her in her private area since she was nine or ten years old. She claimed that he touched her both on top of and underneath her clothes, and that he digitally penetrated her vagina. At trial, she stated that appellant would sometimes masturbate during the abuse, and sometimes he would make her do it for him. On a few occasions, she claimed that appellant performed oral sex. She stated that these incidents of abuse would occur in appellant's bedroom when he would ask her to come in to pray.

Appellant's daughter was taken into DHS foster care during the investigation. According to testimony, she was successful in her foster-care placement, and by the time of appellant's trial, his daughter was eighteen years old, a sophomore in college, and recently had married. She admitted at trial that she had told someone of the abuse when she was ten years old but had recanted when her parents pressured her.

Appellant's neighbor, eleven-year-old son, mother-in-law, sister, and ex-wife denied witnessing any of the alleged abuse. However, the trial court found that the victim's testimony was credible and consistent, and the pastor's testimony that he saw something in the family that bothered him enough to call the school counselor, which resulted in the hotline call, corroborated the victim's testimony. The trial court found appellant guilty of both rape and incest and sentenced him to 360 months in the Arkansas Department of

Correction on the rape charge and 120 months on the incest charge, with the terms to run concurrently. This appeal follows.

A directed verdict is a challenge to the sufficiency of the evidence. *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998); *Graham v. State*, 314 Ark. 152, 861 S.W.2d 299 (1993). The test for determining the sufficiency of the evidence is whether there is substantial evidence to support the verdict. *Britt v. State*, 334 Ark. 142, 974 S.W.2d 436 (1998); *Sanford v. State*, 331 Ark. 334, 962 S.W.2d 335 (1998); *Friar v. State*, 313 Ark. 253, 854 S.W.2d 318 (1993). On appeal, this court reviews the evidence in the light most favorable to the appellee and sustains the conviction if there is any substantial evidence to support it. *Abdullah v. State*, 301 Ark. 235, 783 S.W.2d 58 (1990). Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Jones v. State*, 269 Ark. 119, 598 S.W.2d 748 (1980).

Appellant admits that the trial court may rely on the uncorroborated testimony of a rape victim to sustain a conviction. *Gillard v. State*, 366 Ark. 217, __S.W.3d__ (2006). , Appellant, however, argues that this court should consider that the alleged victim recanted her testimony according to at least one defense witness. Added to that, appellant points out that witnesses testified that his daughter swore to get even with him if she were not allowed to get her own way concerning teenage issues. Appellant argues that his daughter's testimony is not credible in light of the defense witnesses' statements. He argues that under *Barnes v. State*, 258 Ark. 565, 574, 528 S.W.2d 370, 376 (1975), there is an exception to the

general rule that this court does not normally reconsider the credibility of the witnesses when the testimony is "inherently improbable, physically impossible, or so clearly unbelievable that reasonable minds could not differ therefrom."

The State contends that appellant's argument on appeal is not preserved for appellate review because it was not made to the trial court. Under Ark. R. Crim. P. 33.1, a criminal defendant is required to make a specific motion for a directed verdict that advises the trial court of which element of the crime the State has failed to prove. *Webb v. State*, 327 Ark. 51, 938 S.W.2d 806 (1997). A party cannot change the grounds of an objection or motion on appeal, but is bound by the scope and nature of the arguments made at trial. *E.g., Mayes v. State*, 351 Ark. 26, 89 S.W.3d 926 (2002).

In the instant case, the State points out that the appellant made a directed-verdict motion at the close of the State's evidence arguing that the State could only proceed on either the rape charge or the incest charge, but not both. He argued that the State "has not met their burden in this regard and testimony has not been significant." He renewed this motion at the close of all evidence in a general manner. On appeal, appellant argues that this court should consider the credibility of the witnesses. Because he changed the grounds for his motion on appeal, this court declines to consider his argument. *See id.*

Affirmed.

BIRD and VAUGHT, JJ., agree.